

AMENDED IN SENATE JUNE 24, 2015

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY APRIL 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 44

Introduced by Assembly Member Mullin
(Coauthors: Assembly Members Bonta and Gonzalez)
(Coauthor: Senator Anderson)

December 1, 2014

An act to amend Sections 15370, 15601, 15620, 15621, 15626, 15627, and 15632, of, to add Sections 15621.5 and 19204.5 to, and to add and repeal Article 5 (commencing with Section 15645) to Chapter 9 of Division 15 of, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 44, as amended, Mullin. Elections: statewide recounts.

(1) Existing law prohibits a county elections official from opening a ballot after it is counted and sealed, except in certain circumstances, including a recount.

This bill would require a county elections official to store sealed ballots in a manner facilitating the retrieval of any particular ballot in that event.

(2) Existing law requires the Secretary of State to adopt regulations relating to the use of voting systems in recounting ballots.

This bill would also require the Secretary of State to *revise and* adopt regulations relating to *procedures for recounting ballots, including regulations establishing guidelines for* the charges a county elections official may impose when conducting a manual recount.

(3) Existing law establishes procedures by which a voter may request a recount of the votes cast in an election following completion of the official canvass. Existing law requires a voter to make this request within 5 days beginning on the 29th day after the election.

This bill would instead permit a voter to file a request for a recount within 5 days beginning on the 30th day after the election.

(4) Any time during the conduct of a recount and for 24 hours thereafter, existing law permits any other voter to request a recount of any precincts in an election for the same office, slate of presidential electors, or measure not recounted as a result of the original request. Existing law also provides that, where applicable, a voter requesting a recount may select whether the recount shall be conducted manually, or by means of the voting system used originally, or both.

This bill would instead require a voter to select, *for each type of voting system used*, whether the recount is to be conducted manually, or by means of the voting system used originally, but not both. This bill would also specify that if more than one voter requests a recount of the same office, slate of presidential electors, or measure, and at least one request is for a manual recount, then the county elections official of any county subject to multiple requests is only obligated to conduct one manual recount of the ballots subject to the request, and that those results will control.

(5) Under existing law, the voter seeking a recount is required, before the recount is commenced and at the beginning of each subsequent day, to deposit with the elections official the amount of money required by the elections official to cover the cost of the recount for that day.

This bill would permit a voter to request a state-funded manual recount of all votes cast for a statewide office, the office of President of the United States, or a state ballot measure if the difference in the number of votes received is less than or equal to the lesser of ~~1000~~ 1,000 votes or ~~0.015%~~ 0.00015% of the number of all votes cast as specified. This bill would also require a county elections official to review rejected ballots as part of a state-funded recount. This bill would repeal the provisions relating to state-funded recounts as of January 1, 2023.

(6) Under existing law, upon completion of a recount showing that a different candidate was nominated or elected, that a different presidential slate of electors received a plurality of the votes, or that a measure was defeated instead of approved or approved instead of defeated, the result of the recount in each affected precinct is entered and is thereafter considered the official return of the affected precincts.

Existing law provides that if an office, slates of presidential electors, or measure is voted on statewide, the results of any recount are null and void unless each vote cast for the office, slates, or measure in any county specified in the request for recount is recounted.

This bill would instead provide that if an office, slates of presidential electors, or measure is voted on statewide, the results of any recount are null and void unless each vote cast statewide for the office, slates, or measure is recounted.

(7) Existing law requires the Secretary of State to certify or conditionally approve a voting system prior to any election at which it is to be used, as specified. Existing law prohibits the Secretary of State from certifying or conditionally approving a voting system or part of a voting system that does not have certain technical capabilities.

This bill would also prohibit the Secretary of State from certifying or conditionally approving a voting system that cannot facilitate the conduct of a ballot level comparison risk-limiting audit; however, it would expressly permit the Secretary of State to approve a proposed change or modification to a noncompliant voting system even if the voting system would be unable to facilitate the conduct of a ballot level comparison risk-limiting audit after the change or modification.

By imposing new duties on local elections officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 15370 of the Elections Code is amended
2 to read:
3 15370. (a) After ballots are counted and sealed, the elections
4 official may not open any ballots nor permit any ballots to be
5 opened except as permitted in Sections 15303 and 15304, or in the
6 event of a recount.

1 (b) The county elections official shall store sealed ballots in a
2 manner facilitating the retrieval of any particular ballot in the event
3 of a recount.

4 SEC. 2. Section 15601 of the Elections Code is amended to
5 read:

6 15601. (a) The Secretary of State, within the Secretary of
7 State's existing budget, shall adopt regulations no later than January
8 1, 2008, for each voting system approved for use in the state and
9 specify the procedures for recounting ballots, including vote by
10 mail and provisional ballots, using those voting systems.

11 (b) ~~The No later than January 1, 2018, the~~ Secretary of State
12 shall ~~revise and~~ adopt regulations, ~~no later than January 1, 2018,~~
13 ~~specifying procedures for recounting ballots, including regulations~~
14 ~~establishing uniform~~ guidelines for charges a county elections
15 official may impose when conducting a manual recount pursuant
16 to this chapter.

17 SEC. 3. Section 15620 of the Elections Code is amended to
18 read:

19 15620. (a) Following completion of the official canvass and
20 again following completion of any postcanvass risk-limiting audit
21 conducted pursuant to Section 15560, any voter may, within five
22 days thereafter, file with the elections official responsible for
23 conducting an election in the county wherein the recount is sought
24 a written request for a recount of the votes cast for candidates for
25 any office, for slates of presidential electors, or for or against any
26 measure, provided the office, slate, or measure is not voted on
27 statewide. The request shall specify on behalf of which candidate,
28 slate of electors, or position on a measure (affirmative or negative)
29 it is filed.

30 (b) If an election is conducted in more than one county, the
31 request for the recount may be filed by any voter within five days,
32 beginning on the ~~30th~~ 31st day after the election, with the elections
33 official of, and the recount may be conducted within, any or all of
34 the affected counties.

35 (c) For the purposes of this section, "completion of the canvass"
36 shall be presumed to be that time when the elections official signs
37 the certified statement of the results of the election except that, in
38 the case of a city election, if a city council canvasses the returns
39 itself and does not order the elections official to conduct the
40 canvass, "completion of the canvass" shall be presumed to be that

1 time when the governing body declares the persons elected or the
2 measures approved or defeated.

3 SEC. 4. Section 15621 of the Elections Code is amended to
4 read:

5 15621. (a) Following completion of the official canvass any
6 voter may, within five days beginning on the ~~30th~~ 31st day after
7 a statewide election, file with the Secretary of State a written
8 request for a recount of the votes cast for candidates for any
9 statewide office or for or against any measure voted on statewide.
10 Additionally, any voter may file with the Secretary of State a
11 written request for a recount of the votes cast for candidates for
12 any statewide office or for or against any measure voted on
13 statewide within five days following completion of any postcanvass
14 risk-limiting audit conducted pursuant to Section 15560. A request
15 filed pursuant to this section shall specify in which county or
16 counties the recount is sought and shall specify on behalf of which
17 candidate, slate of electors, or position on a measure (affirmative
18 or negative) it is filed.

19 (b) The Secretary of State shall forthwith send by registered
20 mail one copy of the request to the elections official of each county
21 in which a recount of the votes is sought.

22 (c) All the other provisions of this article shall apply to recounts
23 conducted under this section.

24 SEC. 5. Section 15621.5 is added to the Elections Code, to
25 read:

26 15621.5. If more than one voter requests a recount of the same
27 office, slate of presidential electors, or measure pursuant to Section
28 15620 or 15621, and at least one request is for a manual recount,
29 the county elections official of a county subject to multiple requests
30 as described in this section shall conduct only one manual recount
31 of the ballots subject to recount, the result of which shall be
32 controlling.

33 SEC. 6. Section 15626 of the Elections Code is amended to
34 read:

35 15626. The recount shall be commenced not more than seven
36 days following the receipt by the elections official of the request
37 or order for the recount under Section 15620, 15621, or 15645 and
38 shall be continued daily, Saturdays, Sundays, and holidays
39 excepted, for not less than six hours each day until completed. The

1 recount shall not be commenced until the first day following
2 notification of the individuals specified in Section 15628.

3 SEC. 7. Section 15627 of the Elections Code is amended to
4 read:

5 15627. (a) ~~If in the election that is to be recounted the votes~~
6 ~~were recorded by means of a punched voting system or by~~
7 ~~electronic or electromechanical vote tabulating devices, the voter~~
8 ~~who files the declaration requesting the recount shall the votes~~
9 ~~subject to recount were cast or tabulated by a voting system, the~~
10 ~~voter requesting the recount shall, for each set of ballots cast or~~
11 ~~tabulated by a type of voting system, select whether the recount~~
12 ~~shall be conducted manually, or by means of the voting system~~
13 ~~used originally. originally. Only one method of recount may be~~
14 ~~used for all ballots cast or tabulated by the same type of voting~~
15 ~~system.~~

16 ~~(b) Notwithstanding subdivision (a), a county may recount vote~~
17 ~~by mail and provisional ballots in a manner other than that~~
18 ~~requested by the voter.~~

19 (c)

20 (b) For purposes of direct recording electronic voting systems,
21 “conducted manually” means that ~~either the paper record copies~~
22 ~~or the voter verified paper audit trail of the electronically recorded~~
23 ~~vote are~~ is counted manually, as selected by the voter who requests
24 the recount.

25 SEC. 8. Section 15632 of the Elections Code is amended to
26 read:

27 15632. In lieu of the returns as reported in the official canvass,
28 upon completion of the recount showing that a different candidate
29 was nominated or elected, that a different presidential slate of
30 electors received a plurality of the votes, or that a measure was
31 defeated instead of approved or approved instead of defeated, there
32 shall be entered the result of the recount in each precinct affected,
33 which result shall, for all purposes thereafter, be the official returns
34 of those precincts for the office, slates of presidential electors, or
35 measure involved in the recount. If the office, slates of presidential
36 electors, or measure are not voted on statewide, the results of any
37 recount which is not completed by counting the votes in each and
38 every precinct in the jurisdiction within which votes were cast on
39 the candidates for the office, on the slates of electors, or on the
40 measure in question shall be declared null and void. If the office,

1 slates of presidential electors, or measure are voted on statewide,
2 the results of any recount will be declared null and void where
3 there is not recounted each vote cast statewide for the office, slates,
4 or measure.

5 SEC. 9. Article 5 (commencing with Section 15645) is added
6 to Chapter 9 of Division 15 of the Elections Code, to read:

7
8 Article 5. ~~State-funded~~*State-Funded* Recounts
9

10 15645. (a) (1) Within five days after the Secretary of State
11 files a statement of the vote, as required by subdivision (b) of
12 Section 15501, any voter may request a state-funded manual
13 recount of all votes cast for a statewide office or state ballot
14 measure if any of the following occurs:

15 (A) The official canvass of returns in a statewide primary
16 election shows that the difference in the number of votes received
17 by the second and third place candidates for a statewide office is
18 less than or equal to the lesser of ~~1000 1,000 votes or 0.015 percent~~
19 *0.00015* of the number of all votes cast for that office except as
20 provided in paragraph (2).

21 (B) The official canvass of returns in a statewide general election
22 shows that the difference in the number of votes received by the
23 two candidates receiving the greatest number of votes for a
24 statewide office is less than or equal to the lesser of ~~1000 voters~~
25 *1,000 votes or 0.015 percent 0.00015* of the number of all votes
26 cast for that office.

27 (C) The official canvass of returns in a statewide election shows
28 that the difference in the number of votes cast for and against a
29 state ballot measure is less than or equal to the lesser of ~~1000 1,000~~
30 *votes or 0.015 percent 0.00015* of the number of all votes cast on
31 the measure.

32 (2) A voter shall not request a state-funded manual recount of
33 all votes cast for the office of Superintendent of Public Instruction
34 pursuant to this section ~~if unless~~ the official canvass of returns in
35 a statewide primary election shows that ~~a candidate received a~~
36 ~~majority of all votes cast. the number of votes received by the~~
37 *candidate receiving the greatest number of votes was either of the*
38 *following:*

39 (i) *Between 0.49085 and 0.50015, inclusive, of the number of*
40 *all votes cast.*

1 (ii) *Within 1000 votes of 50 percent of the number of all votes*
2 *cast.*

3 (3) For purposes of this subdivision, “statewide office” means
4 the office of Governor, Lieutenant Governor, Attorney General,
5 Controller, Insurance Commissioner, Secretary of State,
6 Superintendent of Public Instruction, Treasurer, or Member of the
7 United States Senate.

8 (b) Within five days after the Secretary of State files a statement
9 of the vote, as required by subdivision (b) of Section 15501, any
10 voter may request a state-funded manual recount of all votes cast
11 for the office of President of the United States if the official canvass
12 of returns in a statewide general election shows that the difference
13 in the number of votes received by the two candidates receiving
14 the greatest number of votes for the office of President is less than
15 or equal to the lesser of ~~1000~~ *1,000* votes or ~~0.015 percent~~ *0.00015*
16 of the number of all votes cast for the office of President.

17 (c) If a state-funded recount is conducted pursuant to this
18 section, no other recount shall be conducted.

19 (d) The State shall reimburse counties for costs resulting from
20 conducting a manual recount pursuant to this section in an
21 expeditious manner upon certification of those costs.

22 15646. (a) Upon ordering a recount pursuant to subdivision
23 (a) or (b) of Section 15645, the Secretary of State shall notify the
24 elections official of each county and shall direct the county
25 elections officials to recount all the votes cast for the office or for
26 and against the state ballot measure.

27 (b) (1) While conducting a recount pursuant to Section 15645,
28 a county elections official shall also review ballots rejected
29 pursuant to Section 15154 to ensure that no ballots were improperly
30 discarded during the initial canvass.

31 (2) The process of reviewing rejected ballots pursuant to
32 subdivision (a) shall be open to members of the public, including
33 persons associated with a campaign or measure.

34 (c) The elections official in each county shall complete a
35 recount pursuant to this section as follows:

36 (1) In a primary election, by three business days before the
37 ~~ballot-printing deadline.~~ *Secretary of State issues the certified list*
38 *of candidates for the associated general election pursuant to*
39 *Section 8120.*

1 (2) In a general election, within 60 days of the voter's request
2 for a recount.

3 15647. All the provisions of Article 3 (commencing with
4 Section 15620), except Sections 15620, 15621, 15622, 15623,
5 15624, and 15627, shall apply to this article unless otherwise
6 provided herein.

7 15648. The Secretary of State may adopt, amend, and repeal
8 rules and regulations necessary for the administration of this article.

9 15649. This article shall remain in effect only until January 1,
10 2023, and as of that date is repealed, unless a later enacted statute,
11 that is enacted before January 1, 2023, deletes or extends that date.

12 SEC. 10. Section 19204.5 is added to the Elections Code, to
13 read:

14 19204.5. (a) The Secretary of State shall not certify or
15 conditionally approve a voting system that cannot facilitate the
16 conduct of a ballot level comparison risk-limiting audit.

17 (b) (1) For purposes of this subdivision, a voting system that
18 is "noncompliant" is a voting system that cannot facilitate the
19 conduct of a ballot level comparison risk-limiting audit.

20 (2) Notwithstanding subdivision (a), the Secretary of State may,
21 *until January 1, 2021*, approve a proposed change or modification
22 to a noncompliant voting system even if the voting system will
23 remain noncompliant after the change or modification. *This*
24 *paragraph shall become inoperative on January 1, 2021.*

25 SEC. 11. If the Commission on State Mandates determines
26 that this act contains costs mandated by the state, reimbursement
27 to local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.